



## UNITED STATES PATENT AND TRADEMARK OFFICE

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Cary, NC 27512

In re Application of  
David D. Hadden et al.  
Application No. 09/837,076  
Filed: April 18, 2001  
For: PERFORMANCE-BASED TRAINING  
ASSESSMENT

DECISION ON PETITION  
TO WITHDRAW THE  
HOLDING OF ABANDONMENT

This is a decision on the applicant's renewed petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on October 16, 2002. The delay in treating this petition is sincerely regretted.

The petition is **GRANTED**.

A review of the file record indicates that the application was held abandoned for failure to respond to the Office action mailed February 12, 2002.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of May 12, 2002. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993).

Applicant's petition submits a statement that the applicant did not receive the above-noted Office action. Applicant also attests to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered as being due was also submitted. This evidence is acceptable proof of non-receipt as provided by 1156 OG 53.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions withdraw the abandonment, return the application to pending status and to redate and remail the Office action of February 12, 2002 based on the reasoning in the case of *Delgar v. Schuyter*, 172 USPQ 513.

Telephone inquiries relative to this decision should be directed to me at the number below.



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SM: 2/6/03